

REMARKS

Applicants thank the Examiner for the thorough examination given the present application.

Interview Summary

This will confirm a telephone interview with Examiner Williams on October 8, 2009 in connection with the above-identified application. In the telephone interview, the undersigned inquired as to whether copies of JP 10-68519 and JP 2003-158999 could be simply attached to this Amendment or whether a new Information Disclosure Statement (IDS) would need to be submitted to have these references considered. Examiner Williams indicated that applicants should submit a new IDS. The undersigned thanks Examiner Williams checking into this matter quickly and promptly calling back with an answer as promised.

Status of the Claims

Claims 2-4 and 6-11 will be pending in the above-identified application upon entry of the present amendment. Claims 1 and 5 have been cancelled herein. Claims 2-4 and 6-11 have been amended to correct a typographical error and/or change the dependency of the claim. Support for additional recitations in claim 4 can be found in Table 5 on page 11 of the present specification. In addition, claims 2 and 4 have been amended to recite the claimed ingredients in separate paragraphs of the respective claims in order to make it easier to read the claim. No changes to the scope of claim 2 have been introduced. No new matter has been added in by way of any of the claim amendments. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Information Disclosure Statement

The Examiner asserts that the Information Disclosure Statement filed on January 5, 2006 requires a legible copy of the foreign patent documents and the non-patent literature publication. With respect to the Andrade et al. reference, Applicants note that the Examiner has included this reference in the Notice of References Cited. As such, submission of this document is not necessary. With respect to the two Japanese patents, please refer to the IDS filed concurrently herewith as discussed above.

Specification

The Examiner has objected to the title as being not descriptive. The title has been amended in order to overcome this issue. As such, removal of this objection is respectfully requested.

Claim Objections

The Examiner has objected to claims 1-2 and 4-5 for reciting "linolic" rather than "linoleic." Claims 1 and 5 have been cancelled herein, which renders the objection moot as to these claims. With respect to claims 2 and 4, the claims have been amended in accordance with the Examiner's suggestion. Accordingly, removal of this objection is respectfully requested.

Issues under 35 U.S.C. § 102

1) The Examiner has rejected claims 1-3 and 7-11 under 35 U.S.C. § 102(b) as being anticipated by Freeman et al. '115 (EP 0304115) as further explained by O'Brien.

2) The Examiner has rejected claims 4-6 under 35 U.S.C. § 102(b) as being anticipated by Andrade et al.

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Legal Standard for Determining Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Distinctions over the Cited References

Freeman et al. '115 disclose menhaden/corn oil blends in ratios of 10:90, 25:75, 50:50, and 75:25. According to the Examiner's calculation, the menhaden/corn oil blend in a ratio of 25:75 comprises 3.5 parts by weight of oleic acid, 7.3 parts by weight of linoleic acid, and 0.2 parts by weight of linolenic acid. In stark contrast, claim 2 of the present application recites that the linolenic acid content of the fat or oil composition is 0.5-1.5 parts by weight.

In the outstanding Office Action, the Examiner adopted the value of 0.5 parts by weight for linolenic acid using the 10:90 ratio while the contents of the other two kinds of fatty acids are based on the oil blend in 25:75 ratio. However, the 25:75 ratio blend oil and the 10:90 ratio blend oil exist as independent entities, and the Examiner appears to be arbitrarily selecting content from different oil blends. It is improper for the Examiner to take parts from several embodiments and combine them in a piecewise manner for the purposes of anticipating the present invention. Anticipation is not established if in reading a claim or something disclosed in a reference it is necessary to pick, choose and combine various portions of the disclosure not directly related to each other by the teachings of the reference. *In re Arkley*, 455 F.2d 586, 587-

88, 172 U.S.P.Q. 524, 526 (CCPA 1972); see also ex parte Beuther, 71 U.S.P.Q.2d 1313, 1316 (Bd. Pat. App. & Inter. 2003) (unpublished).

Turning to Andrade et al., the reference discloses a linoleic acid content of 11.55 parts by weight in a fat and oil composition from Capra fish. In stark contrast, the linoleic acid content of amended claim 4 is 13.4-42.5 parts by weight. Thus, the content of Andrade et al. is clearly outside the claimed range of the linoleic acid content.

Accordingly, the present invention is not anticipated by Freeman et al. '115 or Andrade et al. since the references do not teach or provide for each of the limitations recited in the pending claims.

For completeness, Applicants also respectfully submit that neither Freeman et al. '115 nor Andrade et al. render the present invention obvious because neither the references nor the knowledge in the art provide any disclosure, reason, or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed.

CONCLUSION

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case clearly indicating that each of claims 2-4 and 6-11 are allowed and patentable under the provisions of title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Reg. No. 58,258 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

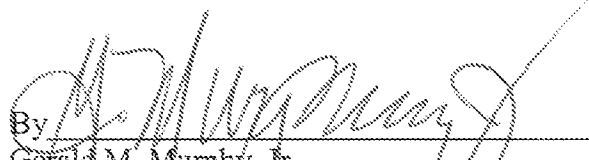
Application No. 10/563,481
Amendment dated October 9, 2009
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Docket No.: 4600-0116PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: October 9, 2009

Respectfully submitted,

By 
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